

JAIL BULLETIN

Number 73

March, 1991

TYPES OF LIABILITY

If a jail employee or any other public official is sued and the Plaintiff (the one bringing the suit) wins, then the official is found **LIABLE**. This is similar to a finding of guilt in a criminal trial. There are different types of liability. Depending on the type, the official may or may not be personally responsible for monetary damages.

OFFICIAL LIABILITY is when a public official is found liable in his official capacity. When found officially liable, the official does not have to pay damages or attorney's fees. His liability is automatically indemnified (covered) by the government.

PERSONAL LIABILITY means that a public official may be found liable as a private person. If so, he is personally liable for damages and attorney's fees. His governmental agency may indemnify him totally, partially or not at all.

In some cases, the person can be found both officially and personally liable.

ADMINISTRATIVE OR VICARIOUS LIABILITY exists when there is a finding that an official is responsible for the acts of his employees. An administrator may be personally or officially liable for the acts of his employees **IF HE WAS AWARE OF A PATTERN OF MISCONDUCT ON THEIR PART AND DID NOTHING ABOUT IT.**

There are several areas of administrative liability which plaintiff's may attempt to prove. If they can prove that the administrator knew of the misconduct of his employees and did nothing about it, then the administrator, his agency and the county (or state) can be held liable.

The advantage of attaching the case to the administrator or supervisor is that he, his agency and unit of government may have a "deeper pocket" than a correctional officer, and thus the damages will be more lucrative.

The areas of administrative liability are:

NEGLIGENT HIRING. The agency has a responsibility to hire qualified employees and weed out those who are obviously unfit.

NEGLIGENT ASSIGNMENT. This arises when the supervisor knows that an employee was obviously unfit for an assignment. In this case, he is obligated to change that employee's assignment.

NEGLIGENT RETENTION. If an employee is unfit for further employment and is retained, the supervisor can be held liable for the misdeeds of that employee.

NEGLIGENT ENTRUSTMENT. This applies to situations where, for example, employees are authorized off-duty weapons or use of automobiles. If they abuse those properties and injure someone, the supervisor can be held liable.

NEGLIGENT DIRECTION. The absence of a written policy and procedure manual may be enough in itself to prove that the supervisor was negligent in directing his employees.

NEGLIGENT TRAINING. A supervisor has an affirmative duty to train his employees, and the failure to do so may cause him to be found liable.

REMEDIES IN A CIVIL RIGHTS SUIT

To be found liable under Section 1983, the plaintiff (the party bringing the suit) must prove that the defendant (the party being sued):

Deprived him of his constitutional rights;
While acting under the color of state law;

And that the official had some personal involvement in the deprivation. (This can include prior knowledge that conditions existed, failure to act to correct that situation, or failure to instruct staff to correct the situation.)

If found liable, the damages which can be awarded under Section 1983 are:

COMPENSATORY DAMAGES. This will "compensate" the plaintiff for his injury (the loss of property, for example) and nothing more.

NOMINAL DAMAGES. This means that the plaintiff gets a trifling sum awarded where there is no substantial loss. However, there is a recognition that there was at least technically a violation of the plaintiff's rights.

PUNITIVE DAMAGES. This is a recognition of misconduct in which the court punishes the defendant for willful disregard of the rights of the plaintiff.

If any damages are awarded, that is sufficient to trigger the Attorney Fee Award Act (Section 1988) when the suit is brought in federal court.

In addition to DAMAGES, the plaintiff in a Section 1983 suit may also ask the court for an INJUNCTION. This means that the plaintiff may ask the court to order cessation of certain jail practices, that they be changed, or that the staff be ordered to implement new procedures. An injunction could cover such issues as visiting, exercise, or the like.

This issue of the "Jail Bulletin" was adapted
from information contained in the "Jail Inspector
Programmed Instruction Training Program",
Thomas A. Rosazza, Author.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the Bulletin, completes the quiz and this process is documented by the jail administrator for review during the annual jail inspection.

**SUBJECT: REMEDIES IN A CIVIL RIGHTS
SUIT AND TYPES OF LIABILITY**

NAME _____

DATE _____

MARCH, 1991

NUMBER: 73

1. Indicate which of the following descriptions are official, personal or vicarious liability.
 - a. This is when a person is found liable as an individual. _____
 - b. This is when a person is found liable as a governmental agent. _____
 - c. This is when a person is found liable because of the acts of his employees.

 - d. This type of liability is also known as administrative liability. _____
2. Identify which of the following remedies are compensatory damages, nominal damages or punitive damages.
 - a. This is an acknowledgement by the court that there was wrongdoing, and the defendant is penalized for the willful violation of the plaintiff's rights. _____
 - b. In this type of damages, the plaintiff is awarded money for the actual loss he suffered.

 - c. This type of damages refers to when there is no substantial loss to the plaintiff but the court grants him a trifling sum. _____
3. When the court orders that the jail cease operating in a certain manner, that order is called a(n)
_____.

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 - c. This type of damages refers to when there is no substantial loss to the plaintiff but the court grants him a trifling sum. NOMINAL
3. When the court orders that the jail cease operating in a certain manner, that order is called a(n) INJUNCTION.

1/2 hour credit for jail inservice training requirement